

## **EXHIBIT 2**

Hon. John C. Coughenour

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re VALVE ANTITRUST LITIGATION,

Lead Case No. 2:21-cv-00563-JCC

**VALVE CORPORATION'S  
RESPONSES AND OBJECTIONS TO  
PLAINTIFFS' THIRD SET OF  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Defendant Valve Corporation ("Valve"), by and through its undersigned counsel, responds to Plaintiffs' Third Set of Requests for the Production of Documents ("Third Requests") as follows:

**GENERAL OBJECTIONS**

Valve makes the following General Objections to Plaintiffs' Third Requests. These General Objections apply and are incorporated into each of Valve's responses below, whether or not also expressly incorporated into a particular response. Valve's responses and objections as set forth herein are made without prejudice to Valve's right to assert further responses or objections should Valve discover additional grounds for such responses or objections. The assertion of the same, similar, or additional objections, or the provision of any responses to any of the discovery propounded, shall not waive any of Valve's General Objections as set forth below.

VALVE'S RESPONSES & OBJECTIONS TO PLAINTIFFS' THIRD  
REQUESTS FOR PRODUCTION (2:21-CV-00563-JCC) - 1

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1           1.       Valve objects to the Instructions and Definitions to the extent they seek to  
2 impose additional or different obligations from the Federal Rules of Civil Procedure, the Local  
3 Rules of the Western District of Washington, any case schedule or other Order entered in this  
4 case, or any agreement between the parties in connection with Valve's responses and  
5 objections to Plaintiffs' First and Second Sets of Requests for Production of Documents.

6           2.       Valve objects to the Third Requests as overbroad and unduly burdensome to the  
7 extent they seek to require Valve to provide any information beyond what is available to Valve  
8 at the present time from a reasonable search of its own records and a reasonable inquiry of its  
9 present employees, including information that is (i) in the possession, custody, or control of  
10 parties or persons other than Valve, and (ii) publicly available or equally accessible to Plaintiffs  
11 elsewhere, e.g., through the Steam website or Steamworks.

12           3.       Valve objects to the Third Requests to the extent they seek to impose a duty on  
13 Valve to create summaries, reports or analyses, or compile information that Valve does not  
14 create, compile, or keep in the requested format in the ordinary course of its business.

15           4.       Valve objects to the Third Requests to the extent they call for the production of  
16 documents that contain Valve's trade secrets or other highly confidential and proprietary  
17 research, development, or commercial or financial information. If any such documents are  
18 produced, production shall only be made pursuant to the Protective Order (Dkt. # 95) and  
19 Agreement Regarding Discovery of Electronically Stored Information and Order ("ESI Order")  
20 (Dkt. # 110).

21           5.       Valve objects to the Third Requests to the extent they call for the production of  
22 documents containing or disclosing the confidential, proprietary, financial or business  
23 information of third parties (including but not limited to publishers or developers distributing  
24 games on Steam), or documents and information subject to confidentiality agreements or  
25 obligations between Valve and others, including but not limited to any confidentiality  
26 obligations under any Steam Distribution Agreement ("SDA"). Valve will not produce such

1 information until any required notice of possible disclosure has been given to potentially  
2 affected third parties and an opportunity provided for such third parties to seek protection  
3 against disclosure.

4 6. Valve objects to the Third Requests to the extent they seek documents  
5 containing or concerning the PII or other private and personal information of Steam users and  
6 Steam account holders, insofar as they infringe upon any rights to, or reasonable expectations  
7 of, privacy and insofar as they seek information subject to or protected by PCI DSS compliance  
8 requirements or other requirements governing the handling of personal information.

9 7. Valve objects to the Third Requests to the extent they are cumulative or  
10 duplicative of any of Plaintiffs' prior Requests for Production and to the extent the documents  
11 sought in the Third Requests have already been produced in this litigation in prior document  
12 productions.

13 8. Valve objects to Instruction No. 1 insofar as it seeks production of documents  
14 that are not available to Valve at the present time from a reasonable search of its own records  
15 and a reasonable inquiry of its present employees, including but not limited to third parties.

16 9. Valve objects to Instruction No. 2 insofar as the time period for which it seeks  
17 documents (January 1, 2012 through the present) is far longer than the purported class period  
18 and to the time period that Plaintiffs imposed on their own responses to Valve's Requests for  
19 Production (e.g., Plaintiffs' General Objection 16 to Valve's Second Requests for Production  
20 states that Plaintiffs will only produce documents covering January 1, 2016 to the present) and  
21 is overbroad, unduly burdensome, and is not proportional to the needs of the case.

22 10. Valve objects to Instruction No. 5 insofar as it seeks to impose any logging  
23 obligations in excess of those imposed by the Federal Rules of Civil Procedure, the Local Rules  
24 of the Western District of Washington, the Protective Order, the ESI Order, or any other order  
25 or agreement regarding privilege, ESI or document production.  
26

1           11. Valve objects to Instruction No. 6 insofar as it seeks to impose any obligation to  
2 supplement different from or greater than that imposed by the Federal Rules of Civil Procedure  
3 or the Local Rules of the Western District of Washington. Insofar as supplementation is  
4 needed, Valve shall supplement in accordance with Fed. R. Civ. P. 26(e).

5           12. Valve objects to all definitions in the Third Requests that differ from the agreed  
6 upon definition or scope of the same defined term in Plaintiffs' First or Second Sets of  
7 Requests for the Production of Documents.

8           13. Valve objects to Plaintiffs' definition of "Developers" and "Publishers" as  
9 overbroad, unduly burdensome, and confusing insofar as (i) the Third Requests define these  
10 terms differently than they are defined in Consolidated Second Amended Class Action  
11 Complaint ¶ 3 n.1, (ii) these terms as defined herein would include persons or entities not  
12 within the proposed class definition, *id.* ¶ 375, specifically persons or entities that produce,  
13 license, or publish video games generally but have not contracted with Valve for distribution  
14 through Steam and/or have not had any game sales over Steam on or after January 28, 2017,  
15 and (iii) there is any difference between the definitions of these terms herein and the  
16 understanding and use of those terms by Valve in the ordinary course of its business, including  
17 but not limited to in Steam Distribution Agreements.

18           14. Valve objects to Plaintiffs' definition of "Document" insofar as it seeks  
19 "personal Communications," which is an undefined term and may infringe on rights to privacy  
20 or confidentiality, or seek individual PII. It is also overbroad, unduly burdensome and beyond  
21 the scope of discovery insofar as it would seek to impose an obligation on Valve to search or  
22 produce documents or communications created or received by employees outside the scope of  
23 their work or on their personal devices or accounts; Valve declines to do so based on its  
24 objections. Valve further objects to "Document" insofar as it purports to seek material "stored  
25 in any medium" including that is in the possession, custody or control of Valve's "attorneys,  
26 agents, or other Persons under Your control." That definition is beyond the scope of allowable

1 discovery, overbroad, unduly burdensome and potentially infringes upon attorney-client  
 2 privilege and work product immunity. Based on its objections, Valve is producing only non-  
 3 privileged documents in its own possession, custody or control.

4 15. Valve objects to Plaintiffs' definitions of "you," "your," and "Valve": (1) to the  
 5 extent these definitions include "attorneys" and purport to require information from Valve's  
 6 attorneys, which would infringe upon the attorney-client privilege and work product immunity;  
 7 (2) to the extent these definitions purport to require Valve to obtain or provide information  
 8 from third parties through their inclusion of the phrases "other affiliates," "partners," "agents,"  
 9 "consultants," "financial services firms," "contractors," "volunteers," "managers," "analysts,"  
 10 "accountants," "representatives," "servants" and "any other person acting or purporting to act  
 11 on behalf of such entities" or "under its direction or control," which phrases are also vague and  
 12 ambiguous as to scope and extent of who is included; (3) to the extent they include any entity  
 13 other than Valve, including any "parent, predecessors, other affiliates, successors, or  
 14 subsidiaries," particularly insofar as none of these are parties to the litigation; and (4) to the  
 15 extent they purport to require Valve to obtain or produce documents or information from  
 16 former officers, directors or employees, or from current directors, officers, and employees in  
 17 their personal capacities, particularly insofar as none of these are parties to the litigation. In  
 18 accordance with its objections, for purposes of these responses and its document production  
 19 Valve understands and uses the terms "you," "your," and "Valve" in Plaintiffs' Third Requests  
 20 to mean solely Valve Corporation and its current directors, officers, and employees acting in  
 21 the course and furtherance of their work.

22 16. Valve objects to the definitions of "Steam Gaming Platform" and "Steam Store"  
 23 as overbroad, unduly burdensome, and confusing or misleading insofar as they artificially split  
 24 Steam into separate pieces in a manner that is contrary to its design and function, are contrary  
 25 to or different from how these phrases are understood or used in the video game industry or by  
 26

1 Valve in the ordinary course of business, or are contrary to or different from how these phrases  
2 are used in the Consolidated Second Amended Class Action Complaint.

3 17. Valve objects to the definition of “Steam Keys” as overbroad and unduly  
4 burdensome insofar as this phrase is defined differently than used or understood by Valve in  
5 the ordinary course of business, including but not limited to in SDAs or Steamworks  
6 Documentation (e.g., the Steamworks document cited in Plaintiffs’ definition of “Steam Key  
7 Guidelines”), and insofar as it is defined contrary to or different from how it is used in the  
8 Consolidated Second Amended Class Action Complaint. Valve further objects to this definition  
9 as vague and ambiguous insofar as it does not distinguish between the three types of available  
10 Steam Keys described in the Steamworks Documentation.

11 18. Valve objects to the definition of “Steam Key Guidelines” as overbroad, unduly  
12 burdensome, vague and confusing (i) to the extent the definition purports to include anything  
13 other than Valve’s own written guidance, rules, policies or statements, (ii) to the extent it  
14 defines or uses the phrase “Steam Key Guidelines” differently than the phrase “Steam Key  
15 Rules” is used in the Consolidated Second Amended Class Action Complaint, and (iii) insofar  
16 as this phrase is defined differently than used or understood by Valve in the ordinary course of  
17 business, including but not limited to on <https://partner.steamgames.com/doc/features/keys>.

18 19. Valve objects to Plaintiffs’ Third Requests as overbroad as to scope and unduly  
19 burdensome insofar as they seek information or materials regarding any operations or activities  
20 outside the United States, particularly in light of Plaintiffs’ geographic market definition in  
21 Consolidated Second Amended Class Action Complaint ¶ 122.

22 20. Valve objects to Plaintiffs’ Third Requests as overbroad as to scope, unduly  
23 burdensome and not proportional to the needs of the case insofar as they seek to impose an  
24 obligation on Valve to search for or produce documents and communications written in any  
25 language other English, including but not limited to communications and documents in foreign  
26 languages (whether or not converted by machine to English).

1           21. In responding to Plaintiffs' Third Requests, Valve does not concede that any  
2 request to which it responds is relevant to the subject matter of this litigation or proportional to  
3 the needs of the case, as that standard is articulated in Federal Rule of Civil Procedure 26(b)(1).  
4 Valve expressly reserves both the right to object to further discovery into the subject matter of  
5 these requests and the right to object to the introduction into evidence of the responses to these  
6 requests or documents produced in response to them. Valve also reserves the right to dispute  
7 the authenticity, relevancy, materiality, privilege, and admissibility of evidence for any purpose  
8 of the information provided, which may arise in any subsequent proceeding in, or the trial of,  
9 this or any other action.

10           22. Valve objects to each request and to each instruction to the extent that it seeks  
11 materials prepared for litigation, or information and documents protected by the attorney-client  
12 privilege, work product doctrine, or any other privilege, or purport to require Valve to provide  
13 information from its attorneys. To the extent each request seeks the disclosure of information  
14 or documents subject to the above claims of privilege or immunity from discovery, Valve will  
15 not produce such privileged or immune documents or information. Valve reserves the right to  
16 object at any time before or at trial to the introduction into evidence or the use of any privileged  
17 documents that have been revealed or produced inadvertently.

18           23. When Valve says in responding to these Third Requests that it will search for  
19 responsive documents, all such searches shall be conducted pursuant to the provisions of the  
20 Protective Order, the ESI Order, and any other agreement or order regarding ESI or document  
21 production.

22           24. Valve objects to these Requests insofar as they purport to require Valve to  
23 describe or define a market through its response, or to adopt Plaintiffs' proposed market  
24 definition, neither of which Valve does through its responses to these Requests.  
25  
26



25. Valve reserves all other objections. Neither Valve's agreement to produce documents nor its agreement to search for documents responsive to the Third Requests shall imply that responsive documents exist within its possession, custody or control.

### **RESPONSES TO REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 79:**

Your federal income tax returns from 2012 to the present including all forms, schedules, exhibits, and statements.

#### **RESPONSE:**

In addition to its General Objections, Valve objects to this Request as unduly burdensome, overbroad in scope and subject matter, seeking information not relevant to any issue in this litigation, and not proportional to the needs of this case. Valve's U.S. federal income tax returns relate to other lines of business (e.g., games, hardware, etc.) and are not limited to Steam. Moreover, Valve has not put its tax returns at issue and its tax returns are not relevant to any issue put in dispute by the Consolidated Second Amended Class Action Complaint. Additionally, there is no compelling need for Valve's U.S. federal tax returns and their production would be cumulative and duplicative because Valve has already produced extensive detailed financial information on the issues in dispute. Among other things, Valve produced:

- Daily transactional data from 2003 through 2022 of all game sales on Steam, for each individual saleable unit and in each local currency and market in which sales occurred;
- Daily data showing all in-game transactions in games on Steam from their inception through 2022;
- Pricing data showing every price and discount for every saleable unit of every game sold on Steam, in each local currency and market in which these sales occurred; and
- Data showing all revenue share payments to Steam Partners for game sales on Steam, from inception through 2022.

Furthermore, the parties are currently negotiating production of additional financial information related to Steam costs and revenues. Valve's federal tax returns would be cumulative in light of Valve's extensive prior disclosure, as well as irrelevant and unnecessary because the information they contain is at a higher level of aggregation than data produced and includes other lines of business that are not at issue. The Ninth Circuit has long recognized a public policy against unnecessary disclosure of tax returns in discovery. *Premium Serv. Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir. 1975); *see also Kappesser v. Northwest Treatment Servs. Inc.*, No. C21-5590-TLF, 2022 WL 4483124, \*1 (W.D. Wash. Sept. 27, 2022) (recognizing public policy, denying motion to compel production of tax returns). Valve further objects to the temporal scope of this request as unreasonably broad, unduly burdensome, and inequitable insofar as it exceeds the time period that Plaintiffs imposed on their own responses to Valve's Requests for Production, including in Plaintiffs' General Objection 16 to Valve's Second Requests for Production, which states that Plaintiffs will only produce documents covering January 1, 2016 to the present.

Based on its objections, Valve is not searching for or producing documents in response to this Request.

**REQUEST FOR PRODUCTION NO. 80:**

All financial statements from 2003 to the present submitted for review by a third party, such as an auditor or certified public accountant, and any Communications in connection therewith.

**RESPONSE:**

In addition to its General Objections, Valve objects to this Request as unduly burdensome, overbroad in scope and subject matter, seeking information not relevant to any issue in this litigation, and not proportional to the needs of this case insofar as (1) it seeks "all financial statements from 2003 to the present," a 20-year time period, without any reasonable

1 DATED this 10th day of July, 2023.

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VALVE'S RESPONSES & OBJECTIONS TO PLAINTIFFS' THIRD  
REQUESTS FOR PRODUCTION (2:21-CV-00563-JCC) - 33

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**CERTIFICATE OF SERVICE**

I certify that I am a secretary at Fox Rothschild LLP in Seattle, Washington. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date shown below, I caused to be served a true and correct copy of the foregoing on counsel of record for all other parties to this action as indicated below:

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 11  
 12 *Executive Committee*

13 I declare under penalty of perjury under the laws of the State of Washington that the  
 14 foregoing is true and correct.

15 EXECUTED this 10th day of July, 2023, in Seattle, Washington.

17   
 18 Courtney R. Brooks